IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 227 of 2007
To
FIRST APPEAL No. 246 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT & 1 - Appellants
Versus
PATEL NATVARLAL TRIKAMBHAI - Respondent.

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Appearance :

FIRST APPEAL Nos. 227 to 236 of 2007

MR SS SHAH, GOVERNMENT PLEADER for Appellants.
MR AJ PATEL for Respondents/claimants.

FIRST APPEAL Nos.237 to 246 of 2007

MR KRUNAL D PANDYA, A.G.P. for Appellants

MR AJ PATEL for respondents/claimants.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 19/01/2007

ORAL COMMON JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

Admitted. Mr.A.J.Patel, learned counsel, waives service of notice on behalf of the claimant/claimants in each appeal. Having regard to the facts of the case, the appeals are taken up for final disposal today.

2. What is challenged in these appeals filed under Section 54 of the Land Acquisition Act, 1894 ("the Act" for short) read with Section 96 of the Code of Civil Procedure, 1908, is the legality of common judgment and award dated July 14, 2005 rendered by the learned 2nd Additional Senior Civil Judge, Ahmedabad (Rural) at Navrangpura, Ahmedabad, in Land Acquisition Case Nos. 178 to 185 of 2000, 187 to 193 of 2000 and 213 to 217 of 200, by which the claimants, except the claimants in Land Acquisition Case Nos.190 of 2000 & 214 of 2000, have been awarded additional amount of compensation at the

rate of Rs.323/- per square metre for their acquired agricultural lands, over and above compensation awarded to them by the Special Land Acquisition Officer at the rate of Rs.35 per square metre by his award dated October 8, 1999, whereas the claimants in Land Acquisition Case Nos.190/2000 & 214/2000 have been awarded additional amount of compensation at the rate of Rs.393.50 ps. per sq.mt. for their acquired non-agricultural lands, over and above the amount of compensation awarded to them at the rate of Rs. 35/- per sq.mt. by the Special Land Acquisition Officer by his award dated October 8, 1999.

3. The Executive Engineer, Roads & Buildings Department, New Sachivalaya, Gandhinagar proposed to the State Government to acquire agricultural and non-agricultural lands of Village:Gota, Taluka: Dascroi, District: Ahmedabad for the public purpose of construction of Chiloda-Gandhinagar-Sarkhej Highway known as National Highway No.8-C. On scrutiny of the said proposal, the State Government was satisfied

that the lands of village Gota specified in the said proposal were likely to be needed for the said public purpose. Therefore, a notification under Section 4(1) of the Act was issued, which was published in the official gazette on October 18, 1996. The landowners, whose lands were proposed to be acquired, were thereafter served with the notices under Section 4(1) of the Act. On receipt of notices, the land-owners opposed the proposed acquisition. After considering their objections, the Special Land Acquisition Officer forwarded his report under Section 5-A(2) of the Act to the State Government. On consideration of the said report, the State Government was satisfied that the lands of Village: Gota, which were specified in the notification published under Section 4(1) of the Act, were needed for the public purpose of construction of Chiloda-Gandhinagar-Sarkhej Highway. Therefore, a declaration under Section 6 of the Act was made, which was published in the official gazette on October 9, 1997. The interested persons were thereafter served with the notices for determination of compensation payable to them. The claimants

appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.2500/- per square metre. However, having regard to the materials placed before him, the Special Land Acquisition Officer by his award dated October 8, 1999 offered compensation to the claimants at the rate of Rs.35/- per square metre for their acquired lands. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, references were made to the District Court, Ahmedabad (Rural) at Navrangpura, where they were registered as Land Acquisition Case Nos. 178 to 185 of 2000, 187 to 193 of 2000 and 213 to 217 of 2000.

4. On behalf of the claimants, witness Natvarlal Trikamlal Patel, was examined at Exhibit

40. The witness claimed that the agricultural lands acquired were leveled as well as highly fertile and that irrigation facilities were available to the lands, as water was available from private-bore and wells. According to this witness, each claimant was using seeds of good quality as well as fertilizer and, therefore, was able to raise crops of rice, tuver, mung etc. The witness mentioned that cultivation was done by the claimants with the help of tractor and as cost of cultivation was low compared to other villages, each claimant was earning net income of Rs.30,000/- per year per Bi*gha* from the sale of agricultural produces. The witness asserted that his village Gota was fully developed, wherein rich people were residing. After stating that the population of the village was about 10,000, the witness informed the Court that National Highway No.8 was passing through his village and facilities of private dispensaries, nationalized banks, Post-Office, Primary-school, High-school etc. were available in the Village. The witness further mentioned that part of the village was within the

limits of Ahmedabad Municipal Corporation and that marble-factories, tiles-factories, petrol-pumps, Silver Oak Club, Gokul Resort etc. were also situated near the village. The witness informed the Court that earlier lands of village Gota were acquired for the purpose of Gujarat Housing Board, with reference to which the claimants were awarded compensation at the rate of Rs. 240/- per sq.mt. by the Reference Court. The witness produced copy of the award of the Reference Court relating to the lands previously acquired for Gujarat Housing Board at Exh.31. The witness further stated that the award of the Reference Court was challenged in First Appeal Nos. 4235 to 4249 of 1998, which were dismissed by the High Court on March 8, 1990. The witness produced a copy of judgment of the High Court delivered in First Appeal Nos.4235 of 1998 and cognate matters at Exh.32. The witness also stated that the judgment of the High Court was challenged by the acquiring authorities before the Supreme Court in S.L.P.Nos. 11212 to 11226 of 1999, which were dismissed on August 6, 1999. The witness produced a copy of order

passed by the Supreme Court in those Special Leave Petitions at Exh.33. The witness further claimed that other lands of village Gota were also acquired for the purpose of Gujarat Housing Board, for which the Reference Court had awarded compensation at the rate of Rs.240/- per sq.mt. in Land Acquisition Case No.205 to 219 of 1992, but, the same was reduced by the High Court to Rs. 217/- per sq.mt. The witness produced previous award of Reference Court at Exh.34, whereas judgment of the High Court delivered in First Appeal Nos.578/2001 to 592/2001 was produced at Exh.35. According to this witness, the lands which were previously acquired were similar in all respects to the lands acquired in the instant case and, therefore, on the basis of the previous awards, the claimants were entitled to enhanced compensation.

Though this witness was cross-examined at length, by the learned Counsel for the acquiring authorities, nothing substantial could be elicited, nor his assertion that the lands of village Gota, which were previously acquired, were similar, in all respects, to the lands acquired in the instant case,

could be demonstrated to be untrue.

5. On behalf of the acquiring authorities, witness Kishanbhai Lalbhai Parmar, who was then Deputy Collector and Additional Land Acquisition Officer, Ahmedabad, was examined at Exhibit 64. The witness claimed in his testimony that the Special Land Acquisition Officer had taken into consideration all the relevant factors before determining the amount of compensation payable to the claimants and, therefore, the claimants were not entitled to enhanced compensation.

6. On appreciation of evidence adduced by the parties, the Reference Court was of the opinion that two previous awards of the Reference Court produced at Exh.31 & Exh.34 as modified/ confirmed by the High Court were relevant pieces of evidence and furnished good guidance for the purpose of determining the market value of the lands acquired in the instant case. The Reference Court noticed that notification under Section 4(1) of the Act was published on March

12, 1990 with reference to the lands which were previously acquired from village Gota, whereas in the instant case, notification under Section 4(1) of the Act was published in the Official Gazette on October 18, 1996, and in view of time-gap between publication of the notifications under Section 4(1) of the Act, the claimants were entitled to the benefit of rise in prices of the lands at the rate of 10% per annum. In the ultimate analysis, the Reference Court has awarded additional amount of compensation at the rate of Rs.323/- per square metre to the claimants, whose agricultural lands were acquired except the claimants in Land Acquisition Case Nos. 190/2000 and 214/2000; whereas the claimants in Land Acquisition Case Nos.190/2000 & 214/2000 whose non-agricultural lands were acquired, have been awarded additional amount of compensation at the rate of Rs. 393.50 ps. per sq.mt., by the impugned award giving rise to the above-numbered appeals.

7. This Court has heard Mr.Krunal D.Pandya,, learned Assistant Government Pleader for the

appellants, and Mr.A.J.Patel, learned counsel for the original claimant/claimants in each appeal, at length and in great detail. This Court has also considered the paper-book supplied by the learned counsel for the claimant/s, which includes oral as well as documentary evidence adduced by the parties before the Reference Court.

8. Though the assertion made by the witness for the claimants that each claimant was earning net income of Rs.30,000/- per year per B*igha* from the sale of agricultural produces could not be made good, there is no manner of doubt that except the lands, which were subject matter of Land Acquisition Case Nos.190/2000 & 214/2000, the lands acquired were levelled and highly fertile. This fact stands proved by the contents of 7/12 extracts relating to the lands acquired, which were produced by the witness at Exhibits 14 to 30. The record does not indicate that the claimants had claimed enhanced compensation either on the basis of evidence of expert, or on yield basis, or on the basis of comparable sale

instances. Reliance was placed by the claimants on two previous awards of the Reference Court relating to the lands of this very village. The first award was produced at Exh.31. A perusal of Exh.31 makes it more than clear that the lands of village Gota, Taluka : Dascroi, District : Ahmedabad were acquired for the public purpose of construction of residences by Gujarat Housing Board pursuant to publication of notification under Section 4(1) of the Act in the Official Gazette on March 12, 1990. Therein, the Special Land Acquisition Officer by his award dated December 10, 1991 had offered compensation to the claimants at the rate of Rs. 57/- per sq.mt. Feeling aggrieved, the claimants had sought references. Accordingly, references were made to the District Court, Ahmedabad (Rural), where they were registered as Land Acquisition Cases No. 205 ro 219 of 1992. In those cases, on behalf of the claimants, witness Jivanlal Madhavlal Chaudhary was examined at Exh.16; whereas witness Dasharathbhai Shivabhai Patel was examined at Exh.69 and witness Rameshbhai Sankabhai Patel was examined at Exh.70. The 4th witness

examined on behalf of the claimants was Bhikhubhai Ramjibhai Rami, whose testimony was recorded at Exh.71. On the basis of the evidence adduced therein, the Reference Court by award dated March 21, 1998 awarded additional amount of compensation at the rate of Rs. 183/- per sq.mt. Thereupon, Gujarat Housing Board preferred First Appeal Nos. 4235 to 4249 of 1998. The High Court by judgment dated March 8, 1999 partly allowed the appeals holding that the claimants were entitled to compensation at the rate of Rs. 217/- per sq,mt. The judgment of the High Court was challenged by the Gujarat Housing Board before the Supreme Court in Petitions for Special Leave to Appeal (Civil) Nos.11212 to 11226 of 1999. Exh.33 indicates that the judgment of the High Court was not interfered with by the Supreme Court and Special Leave to Appeals were dismissed by order dated August 16, 1999.

Again, another previous award of the Reference Court relating to acquisition of lands from village Gota produced at Exh.34 indicates that the lands of

village Gota were acquired for the public purpose of construction of residential houses by Gujarat Housing Board pursuant to notification published under Section 4(1) of the Act in the Official Gazette on March 12, 1990 and March 13, 1990. Therein also, the Special Land Acquisition Officer by his awards dated December 10, 1991 and October 11, 1991 had offered compensation to the claimants at the rate of Rs. 57/- per sq.mt. Feeling aggrieved, the claimants had sought references. Accordingly, references were made to the District Court, Ahmedabad (Rural), which were registered as Land Acquisition Case Nos. 160 to 172 of 1993 and Land Acquisition Case Nos.391 to 550 of 1999. Therein also, on behalf of the claimants, witness Jivanlal Madhavlal Chaudhary and other witnesses were examined; whereas on behalf of the acquiring authorities, witness Ramanbhai Bhulabhai Patel was examined. On appreciation of the evidence adduced by the parties, the Reference Court by award dated January 7, 2000 awarded, in all, compensation at the rate of Rs. 217/- per sq.mt. Feeling aggrieved, the acquiring authorities preferred First

Appeal Nos. 578 to 592 of 2001. The High Court by judgment dated December 19, 2001 dismissed those appeals and confirmed the award of the Reference Court. A copy of the judgment of High Court in First Appeal Nos.578 to 592 of 2001 is produced at Exhibit 35.

9. As observed earlier, the assertion made by the witness for the claimants that the lands of village Gota, which were previously acquired, were similar, in all respects, to the lands acquired in the instant case, could not be demonstrated to be untrue. It is well-settled that the previous award of Reference Court relating to the lands of a Village, which has attained finality, can be relied upon as a good piece of evidence for the purpose of determining market value of similar lands subsequently acquired from the same village. Under the circumstances, this Court is of the opinion that the Reference Court did not commit any error in placing reliance upon previous award of the Reference Court produced at Exh.31 as modified by the High

Court and another award of the Reference Court produced at Exhibit 34 for the purpose of determining market value of the lands acquired in the instant case. As noticed earlier, both the previous awards have attained finality. In both the cases, the claimants were awarded compensation at the rate of Rs.217/- per sq.mt. for their acquired lands. It is also well-settled that if there is time-gap between the notifications issued under Section 4(1) of the Act, the claimants would be entitled to reasonable rise in prices of the lands at the rate of 10% per annum. In the previous two cases, notification under section 4(1) of the Act was published in the Official Gazette on March 12, 1990, whereas in the instant case, notification under Section 4(1) was published in the Official Gazette on October 18, 1996. Thus, there is no manner of doubt that there was time-gap of 6 1/2 years between issuance of notifications in the two cases and, therefore, the claimants would be entitled to the benefit of rise in prices of the lands at the rate of 10% per annum. In the ultimate analysis, this Court finds that the

Reference Court has rightly awarded additional amount of compensation at the rate of Rs.323/- per sq.mt. to the claimants, whose agricultural lands were acquired as well as Rs. 393.50 ps. per sq.mt. to the claimants in Land Acquisition Case Nos.190/2000 & 214 of 2000 whose non-agricultural lands were acquired. On reappreciation of evidence adduced by the parties, this Court finds that correct findings of facts have been recorded by the Reference Court to which well-settled principles of law have been applied. The learned Assistant Government Pleader could not persuade the Court to take a view different than the one taken by the Reference Court on appreciation of evidence adduced by the parties. Thus, the appeals, which lack merits, deserve to be dismissed.

For the foregoing reasons, all the appeals fail and are dismissed. There shall be no orders as to costs. The Registry is directed to draw decree in terms of this judgment immediately.

[J.M.PANCHAL, J.] [SMT. ABHILASHA KUMARI, J.] (patel)